IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5794 of 2007()

CRIME NO.369/07 OF KUNNIKODE POLICE STATION

PETITIONERS/ACCUSED

---

1. SHAHUDEEN KUNJU, S/O. MYTHEEN KUNJU,
   THENGUVILA PUTHEN VEEDU, AVANEESWARAM MURI,
   VILAKUDY VILLAGE, PATHANAPURAM TALUK, KOLLAM.

2. HAFSA BEEVI, W/O. SHAHUDEEN KUNJU,
   -DO- -DO-

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 5794 of 2007

- -

Dated this the 25th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioners are husband and wife. They were allegedly having the right and possession over 66 cents of land. They entered into an agreement with the defacto complainant for sale of the said item of property. Advance towards sale consideration as agreed was received from time to time. The Sale Deed was not executed. The defacto complainant came to realise that out of the said 66 cents of land, 32 cents of land had already been assigned prior to the agreement by the petitioners in favour of their daughter and son-in-law. In these circumstances the defacto complainant filed a complaint before the learned Magistrate alleging commission of the offence punishable under Section 420 I.P.C. That complaint was forwarded by the learned Magistrate to the police under Section 156(3) Cr.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the allegations are totally false and vexatious. It is true that two

documents were executed, but the petitioners have undertaken the responsibility to assign the said 66 cents of land to the defacto complainant. The petitioners stand by that assertion. The daughter and son-in-law of the petitioners had given Power of Attorney in favour of the petitioners to execute documents. They, who are abroad, are now available in India to execute the document. A purely civil dispute is raised. The defacto complainant has initiated needless and vexatious criminal adjudicatory process with the intention of harassing the petitioners. The petitioners are willing to abide by the agreement dt. 11.1.2007. They submit that the boot is on the other leg. ,The defacto complainant is not prepared to abide by the agreement. The petitioners shall co-operate with the investigation. They may be saved of the undeserved trauma of arrest and detention, submits the learned counsel.

3. The learned Prosecutor opposes the application. He submits that the present statement of the petitioners that they have the Power of Attorney of their assignees is of no avail and that at any rate the initial suppression amounts to fraudulent deception.

4. I have considered all the relevant inputs. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations

raised or the credibility of the data collected. Suffice it to say that after an anxious evaluation of all the relevant inputs, I find merit in the prayer of the learned counsel for the petitioners. The contention that the dispute is essentially and basically a civil dispute does appear to me to be relevant. I am satisfied that directions under Section 438 Cr.P.C. can be issued in favour of the petitioners, subject, of course, to appropriate conditions.

5. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall surrender before the learned Magistrate on 3.10.2007 at 11 a.m. The learned Magistrate shall release the petitioners on regular bail on condition that they execute bonds for Rs.25,000/- (Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 4.10.07 and 5.10.2007 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioners do not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 3.10.06 and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(d) If the petitioners were arrested prior to their surrender on 3.10.2006 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs.25,000/- each without any surety undertaking to appear before the learned Magistrate on 3.10.2007.

(R. BASANT)
Judge

tm